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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,842	12/10/2003	Joe C. Worley	00-02a	6689

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EXAMINER

DEL SOLE, JOSEPH S

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 11/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/732,842

Applicant(s)

WORLEY ET AL.

Examiner

Joseph S. Del Sole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-42 is/are pending in the application.
- 4a) Of the above claim(s) 35-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 20-34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 20-42 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 20-34, drawn to an apparatus, classified in class 425, subclass 113.

II. Claims 35-42, drawn to a method, classified in class 264, subclass 209.1.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the method can be used by an apparatus wherein an extruder housing is constructed integrally with a material separating portion.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Mr. Tassone on 10/29 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-34.

Affirmation of this election must be made by applicant in replying to this Office action.

Claims 35-42 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Priority

6. This application filed under former 37 CFR 1.60 lacks the necessary reference to the prior application because the current status of nonprovisional parent applications referenced should be included.. The sentence inserted before line 3 of page 1 should be amended to read --"This is a division of U.S. Serial No. 09/923,974, filed August 7, 2001 and now U.S. 6,716,021 B2."-- should be entered following the title of the invention or as the first sentence of the specification.

Information Disclosure Statement

7. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

8. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the

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description: "line 7-7" and "line 9-9" are missing from Figures 6 and 8 respectively (such references are mentioned respectively at lines 20 and 22 of page 4). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

9. The disclosure is objected to because of the following informalities: **a)** lines 20 and 22 of page 4 mention "line 7-7" and line 9-9" respectively, however the figures 6 and 8 are lacking these lines.

Appropriate correction is required.

Claim Objections

10. Claim 34 is objected to because of the following informalities: **a)** "aid fixed center" at line 4 of claim 34 should be changed to --said fixed center--; and **b)** "an out r surface" at line 6 of claim 34 should be changed to --an outer surface--. Appropriate correction is required.

11. Claims 28, 29, 31 and 32 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous

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claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The nature of the material (including nothingness in the case of the material being extruded as an unsupported tubular structure) upon which material is extruded does not further limit the structure of the apparatus and the nature of the final product (be it a high pressure or power steering hose) does not further limit the structure of the apparatus.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 20-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Ramsey (3,833,325).

Ramsey teaches a fixed center die module (Fig 2) for use in an extrusion apparatus through which molten material is continuously extruded to form a tubular structure (Fig 1), the fixed center die module is configured such that the molten material is divided into a plurality of separate and equal portions (Figs 2-5); the module has a plurality of raised surfaces (Fig 2, #s 47, 46, 62, Fig 5, #s 46, 62, 90) extending from a central longitudinal axis thereof, the raised surfaces providing a plurality of passages between the plurality of raised surfaces such that the molten material is divided into the plurality of separate and equal portions; the module has a diverter (Fig 2, at #49) integral with an extending from the outer surface of the tubular member for distributing

the molten material through the plurality of passages to uniformly divide the molten material into a plurality of separate and equal portions and provide a balanced flow of the molten material; the diverter distributes the molten material to a first set of passages wherein the molten material is divided into two separate and equal portions, and subsequently urges the molten material in the first set of passages to a second set of passages wherein the two separate and equal portions are subsequently divided into four separate and equal portions (Fig 2); the fixed center die module exhibits a frusto-conical configuration around the center longitudinal axis to slidably mate with a tapered interior wall surface of the extruder housing (Fig 1 at #28 and Fig 2 at #35); the tubular member having a uniform inner circumference (Fig 2) along the longitudinal axis from which the plurality of raised surfaces extend (Fig 2); the module cooperates with an extrusion die head to provide a balanced flow of the molten material (Fig 1); the fixed center die module is configured to evenly distribute and coat the molten material onto a cylindrical body issuing from the tubular member (Fig 1); the extruder is capable of feeding a cylindrical body that is a mandrel, wire or tubular structure (Fig 1); the balanced flow of molten material is capable of being extruded as an unsupported tubular structure; the extrusion apparatus is a crosshead extruder (Fig 1); the module is capable of being useful in the manufacture of high pressure hose or power steering hose (Fig 1); the configuration of the fixed center die module precludes the need for continuous die adjustment to achieve predetermined cross-section and uniform wall gauge concentricity of the tubular structure (Fig 1); and the module has a tubular

member having a uniform inner circumference and an outer surface along its central longitudinal axis.

14. Claims 20-24 and 26-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Bentivoglio (5,984,657).

Bentivoglio teaches a fixed center die module (Fig 2) for use in an extrusion apparatus through which molten material is continuously extruded to form a tubular structure (Fig 1), the fixed center die module is configured such that the molten material is divided into a plurality of separate and equal portions (Figs 2 and 2A); the module has a plurality of raised surfaces (Fig 2, #s 54 and 43A) extending from a central longitudinal axis thereof, the raised surfaces providing a plurality of passages between the plurality of raised surfaces such that the molten material is divided into the plurality of separate and equal portions; the module has a diverter (Fig 2, #54) integral with an extending from the outer surface of the tubular member for distributing the molten material through the plurality of passages to uniformly divide the molten material into a plurality of separate and equal portions and provide a balanced flow of the molten material; the diverter distributes the molten material to a first set of passages wherein the molten material is divided into two separate and equal portions, and subsequently urges the molten material in the first set of passages to a second set of passages wherein the two separate and equal portions are subsequently divided into four separate and equal portions (Figs 2 and 2A); the fixed center die module exhibits a frusto-conical configuration around the center longitudinal axis to slidably mate with a tapered interior wall surface of the extruder housing (Figs 1 and 2); the module cooperates with an

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extrusion die head to provide a balanced flow of the molten material (Fig 1); the fixed center die module is configured to evenly distribute and coat the molten material onto a cylindrical body issuing from the tubular member (Fig 1); the extruder is capable of feeding a cylindrical body that is a mandrel, wire or tubular structure (Fig 1); the balanced flow of molten material is capable of being extruded as an unsupported tubular structure; the extrusion apparatus is a crosshead extruder (Fig 1); the module is capable of being useful in the manufacture of high pressure hose or power steering hose (Fig 1); the configuration of the fixed center die module precludes the need for continuous die adjustment to achieve predetermined cross-section and uniform wall gauge concentricity of the tubular structure (Fig 1); and the module has a tubular member having a uniform inner circumference and an outer surface along its central longitudinal axis.

Double Patenting

15. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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16. Claims 20-34 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 and 4-8 of U.S. Patent No. 6,716,021. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-2 and 4-8 of 6,716,021 teach a fixed center die module (claim 1, line 10) for use in an extrusion apparatus through which molten material is continuously extruded to form a tubular structure (claim 1, lines 1-12), the fixed center die module is configured such that the molten material is divided into a plurality of separate and equal portions (claim 1, lines 15-19); the module has a plurality of raised surfaces (claim 4) extending from a central longitudinal axis thereof, the raised surfaces providing a plurality of passages between the plurality of raised surfaces such that the molten material is divided into the plurality of separate and equal portions; the module has a diverter (claim 1) integral with an extending from the outer surface of the tubular member for distributing the molten material through the plurality of passages to uniformly divide the molten material into a plurality of separate and equal portions and provide a balanced flow of the molten material; the diverter distributes the molten material to a first set of passages wherein the molten material is divided into two separate and equal portions, and subsequently urges the molten material in the first set of passages to a second set of passages wherein the two separate and equal portions are subsequently divided into four separate and equal portions (claim 1); the fixed center die module exhibits a frusto-conical configuration around the center longitudinal axis to slidably mate with a tapered interior wall surface of the extruder housing (claim 1); the tubular member having a uniform inner circumference (claim 4) along the

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longitudinal axis from which the plurality of raised surfaces extend (claim 4); the module cooperates with an extrusion die head to provide a balanced flow of the molten material (claim 1); the fixed center die module is configured to evenly distribute and coat the molten material onto a cylindrical body issuing from the tubular member (claim 1); the extruder is capable of feeding a cylindrical body that is a mandrel, wire or tubular structure (claim 1); the balanced flow of molten material is capable of being extruded as an unsupported tubular structure; the extrusion apparatus is a crosshead extruder (claims 5 and 8); the module is capable of being useful in the manufacture of high pressure hose or power steering hose (claims 1-2 and 4-8); the configuration of the fixed center die module precludes the need for continuous die adjustment to achieve predetermined cross-section and uniform wall gauge concentricity of the tubular structure (claims 6 and 7); and the module has a tubular member having a uniform inner circumference and an outer surface along its central longitudinal axis (claims 1 and 7).

Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joseph S. Del Sole whose telephone number is (571) 272-1130. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Benjamin Utech, can be reached at (571) 272-1137. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for both non-after finals and for after finals.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from the either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 886-217-9197 (toll-free).

Joseph S. Del Sole
J.S.D.

November 3, 2004